CAlifornians for Renewable Energy, Inc. (CARE)
821 Lakeknoll Dr.
Sunnyvale, CA 94089

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-----Original Message-----
From: Kenneth Shawn Smallwood [mailto:puma@davis.com]
Sent: Monday, March 12, 2001 4:32 PM
To: LShaw@energy.state.ca.us
Cc: Boyd, Mike
Subject: Blythe Energy Project

Dear Mr. Shaw,

I have been retained by Californians' for Renewable Energy as an expert on biological resources related to the Blythe Energy Project. I request a two month continuance of the Committee Conference and public comment period on the Blythe Energy Project because I only recently got a copy of the Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP). The submittal letter of the BRMIMP was stamped with a date of December 26, 2000, but it apparently was not received by the CEC until March 1, 2001. The apparent delay in the applicant's submittal of the BRMIMP to the CEC has left insufficient time for me to provide my client with adequate expert review. I got the BRMIMP on March 8th, and will need another two months to review and comment on it.

Please rectify this alarming delay in the release of the BRMIMP by granting my request that the Committee Conference and public comment period be extended another two months.

Thank you,

Shawn Smallwood

Shawn Smallwood

12 March, 2001

CAlifornians for Renewable Energy, Inc. (CARE)
821 Lakeknoll Dr.
Sunnyvale, CA 94089

-----Original Message-----
From: Kenneth Shawn Smallwood [mailto:puma@davis.com]
Sent: Monday, March 12, 2001 1:11 PM
To: Boyd, Mike
Subject: Blythe

Mike, please review the following letter, suggest any changes that should be made, then instruct me to whom and where I should send it.

Thanks,

Shawn
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I request a two month continuance of the public comment period on the Blythe Energy Project because I only recently got a copy of the Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP). The submittal letter of the BRMIMP was stamped with a date of December 26, 2000, but it apparently was received by the CEC until March 1, 2001. I got the BRMIMP on March 8th, and will need another two months to review and comment on it.

I am mystified by the date stamped on the cover letter of the BRMIMP. It appears as though the applicant completed but withheld the BRMIMP for more than two months, during which time critical public comment periods passed. Please rectify this alarming shortfall in participating with the public by granting my request that the comment period be extended another two months.

Thank you,

Shawn Smallwood
Expert on Biological Resources,
Retained by Californians' for Renewable Energy

CAlifornians for Renewable Energy, Inc. (CARE)
821 Lakeknoll Dr.
Sunnyvale, CA 94089

Preliminary Comments on the Proposed Blythe Energy Project

K. Shawn Smallwood, Ph.D.

On behalf of Californians for Renewable Energy, Inc. (CARE) and farm laborers residing in the Blythe area, who are also members of CARE, I have reviewed the California Energy Commission (CEC) Preliminary Staff Assessment (PSA) and Final Staff Assessment (FSA) of the Application for Certification 99-AFC-8, Blythe Energy Project (BEP). I understand that the CEC and Western Area Power Administration (WAPA) regard the FSA to also serve as WAPA's Environmental Assessment (EA). My qualifications for responding to the PSA are summarized in my short biography and Curriculum Vitae, which area attached.

Process

The CEC and WAPA portray the FSA/EA as a joint CEQA/NEPA document. However, there are a number of attributes of the FSA that are atypical or improper of CEQA/NEPA documents. These attributes include, but area not limited to, the following:

- Piecemeal release of the planning documents;
- Deferring the formulation of the mitigation plan to a later date, outside the time period during which the public can meaningfully participate;
- Ignoring obvious substantial impacts;
- Minimizing estimates of impacts;
- Contriving and assessing overly narrow ranges of alternative sites, energy generation measures, project operations, and mitigation measures.

I will address these FSA shortfalls in the paragraphs that follow.

Piecemeal Document Release

After having reviewed and commented on the CEC's documents prepared for the proposed Metcalf Energy Center (MEC, 99-AFC-3) and Contra Costa Power Plant Unit 8 (00-AFC-1), I am again disappointed to see that the CEC has embarked on the same style of piecemeal document preparation for the Blythe Energy Project. The piecemeal release of documents prepared by the applicant, the CEC, the California Department of Fish and Game (CDFG) and the US Fish and Wildlife Service (USFWS) has confused the issues related to BEP, and has created an almost insurmountable burden for my client, who simply cannot afford to keep up with all these documents and all the changes made from one to the next.

The PSA of the Blythe Energy Project embarked on the same sort of piecemeal document releases as happened at Metcalf Energy Center and Contra Costa Power Plant Unit 8, and indicates that the CEC staff would render conclusions and make recommendations to the Commissioners without considering the comments of the public

regarding the mitigation and monitoring plan. I do not understand how the CEC staff can make informed decisions, even on a preliminary basis, when they have not seen the Biological Resources Mitigation Implementation and Monitoring Plan or the comments from the public. I know from experience that this piecemeal document release will prevent me from providing the level of expert consultation to my client that my client deserves. I highly recommend that the CEC cease this approach and adopt Environmental Impact Reporting required by CEQA. EIRs are more effective at utilizing public input and providing useful information that decision-makers can rely on to minimize environmental impacts.

Deferring formulation of mitigation

The PSA and FSA prepared for the BEP claimed that the mitigation for adverse impacts on biological resources would be described in a biological resources mitigation implementation and monitoring plan (BRMIMP). As I pointed out repeatedly in my comments on the Metcalf Energy Center and Contra Costa Power Plant Unit 8, it is improper, and it is unhelpful to the public, to defer the formulation of a mitigation plan to a later date. The public needs to have the opportunity to review the mitigation plan prior to CEC staff recommendations. In this case, the BRMIMP arrived on March 1, 2001. The comment period on the PSA had long been past, so the public (including myself) had no opportunity for input until the certification process had been ongoing.

In its FSA on the Blythe Energy Project, the CEC made it clear that it regards the formulation of the mitigation plan for biological resources to be exempt from public participation. The CEC repeatedly stated that the mitigation plan and all its measures would be developed during the certification process, following the FSA. For the third time in as many proposed energy projects I have reviewed for CARE, the BRMIMP has been released just before or after the FSA was issued, and the section 7 consultations with the USFWS has yet to be completed for any of these projects. It is unclear whether the consultation with the California Department of Fish and Game has been completed for any of these projects. Even if they have been completed, the public has been excluded from the consultations with both the USFWS and CDFG both in terms of the timing of these consultations and in providing oral and written testimony. No comment periods were issued by these state and federal agencies, and I cannot tell that the public was ever notified that they have an opportunity to participate with the consultations.

At the time of the PSA, CEC staff biologists could not recommend one way or the other whether the BEP be certified because several important issues remained unresolved. By the time the FSA was released, staff biologists recommended certification on the grounds that the mitigation measures to be detailed later in the BRMIMP would reduce the impacts to less-than-significant levels. What transpired between the PSA and FSA to compel staff to change positions on the BEP? ...

The BRMIMP, or preliminary draft BRMIMP until the Biological Opinion is released, also defers formulation of mitigation to unspecified future dates. It promises to notify the

CEC of any changes to the mitigation measures at least 30 days prior to implementation. The public was given no idea what these changes might entail, and the public certainly will not have any opportunity to meaningfully participate with the formulation of the mitigation plan after the BEP has begun operations. All mitigation plans and measures should have been specified up front and prior to close of comment periods.

Non-independence of CEC staff biologists

The FSA also promotes a critical misconception about its role as a lead agency overseeing proposed energy facilities. According to the FSA, the CEC staff provides an "independent review and analysis" of the BEP. This statement is false. The CEC staff biologists are trained professionals, no doubt, but not independent in their review and analysis of projects proposed by the very industry that justifies their employment at the CEC. Reviewers of papers submitted to scientific journals are typically unpaid, and are expected to reveal any professional or personal relationships they might have with the author(s), or to even excuse themselves as reviewers should there be conflicts of interest or appearances of such. CEC staff members appear to have well-established relationships with staff of other regulatory agencies and with project applicants and their consultants. However, CEC staff had not openly, fully disclosed the nature of their relationships with all parties involved, nor have they offered to delegate project reviews and analyses to truly independent parties.

CEC staff biologists enjoy a unique relationship with USFWS, which is another reason to reject the claim that they are independent reviewers. According to the sworn testimony of a CEC staff biologist at the Biological Resources Evidentiary Hearing for the MEC (hereafter referred to as EH) on Feb. 15, 2001, the applicant's consultants rely on information provided them by CEC staff biologists (EH page 184), who rely on the applicant for information related to project impacts and preferred mitigation (EH pages 188-189), and upon whom the USFWS staff biologists rely for formulating their draft Biological Opinion (EH pages 226-230). The applicant's experts and the CEC staff biologists apparently met with the USFWS staff biologist, who based her Draft Opinion on their input and on none of my (public) input. The relationship between the CEC and the USFWS is so close that the CEC biologist felt comfortable stating that the USFWS Biological Opinion will not add any new information to the FSA and BRMIMP (EH page 240). When asked whether my testimony affected any of her conclusions, the USFWS staff biologist indicated that it hadn't (EH page 234-235). I must conclude that either my input was completely useless and the issues I raised were trivial, or the USFWS, CEC and the applicant maintain an exclusive relationship. Given my effectiveness as a scientist, I have to conclude that the latter is true, and that the CEC staff biologists are not independent reviewers of the Blythe Energy Project or any other energy project before them.

The applicants for certification of power plants in California have been given the means to exclude the public from participating with the formulation of mitigation and monitoring. The USFWS testified that their Biological Opinions resulting from Section 7 consultation

lack any mechanism for public participation (EH pages 226-230). The CEC has been releasing its FSAs without having the Biological Opinion, and without the public having the opportunity to review the BRMIMP. The BRMIMP issued just before or after the FSA is termed "preliminary," and is revised according to the Biological Opinion, which, according to the USFWS and CEC (EH pages 226-230), will likely be unchanged from the FSA and which itself is a reflection of the elite preferences of the applicant (EH pages 188-189). The impression I get is that the applicant of each power plant hides the mitigation and monitoring plan from the public until it is too late for public involvement, then issues it just prior to the Biological Opinion, which is based on it because the USFWS had access to it all along.

Furthermore, I obtained a copy of the BRMIMP prepared for the Blythe Energy Project. The cover letter to the CEC is stamped with a date of December 26, 2000. The CEC received the BRMIMP on March 1, 2001. The BRMIMP appears to have been completed but withheld from release for more than two months, during which time the public review process was of critical importance and final. Therefore, it appears that the applicant may have intentionally excluded the public from participating with the formulation of the mitigation and monitoring plan of the Blythe Energy Project.

To be consistent with CEQA, the CEC, in the case of the BEP, should not rely upon the FSA as an EIR. The applicant should write the EIR, which should include the BRMIMP within the same document. This way, the CEC could return to its legitimate role as a lead agency and get away from the awkward business of defending it's and the applicant's combined plan. Just as authors of scientific papers never serve as independent reviewers of their own papers, the CEC should not attempt to "independently review" it's own environmental impact report (i.e., the FSA). By developing the EIR/EIS itself, the CEC cannot help but infuse the plan with staffs' own ideas and creativity, which are attributes only naturally defended when criticized by the public. It is not possible for the authors of documents that are criticized by others to also be independent reviewers. Under CEQA, lead agencies do not normally prepare EIRs for project proponents because the public would be infuriated by public funds subsidizing the project proponents and because bias of the lead agency would be inevitable.

Environmental Setting

The applicant assembled, and the CEC accepted, an impressive list of special-status species potentially affected by the BEP. However, I would have added the Sonoran mud turtle (*Kinosternon sonoriense sonoriense*) and a number of other special-status species.

Also, a species of checkerspot butterfly was apparently omitted from the BEP's special-status species list. According to CEC staff, who testified at the Evidentiary Hearing on the Biological Resources affected by the MEC (EH page 203), a species of checkerspot butterfly was assessed for adverse impacts caused by the NO_x emissions at Blythe. I'm very interested in seeing the impact assessment performed for this species, so I request

that the special-status species list be updated. I also request that the FSA be amended with information regarding the checkerspot butterfly's natural history, potential adverse impacts due to the BEP, and proposed mitigation measures for it.

Despite the impressive list of special-status species, the assessments of habitat conditions, project impacts and proposed mitigation were restricted to desert tortoise, burrowing owl, and Harwood's milkvetch. I discerned no habitat description of at least 55 species that are or should be on this list, nor could I find an impact assessment on any species besides the desert tortoise. The proposed mitigation did not address at least 55 species that should be mitigated for take, according to the list. I will address these discrepancies under Impacts Assessment and Mitigation below, but I wanted to point out that the environmental setting has been inadequately described in terms of the habitat conditions relevant to at least 55 special-status species. I do not understand the point of listing the species in Table 1 of the FSA's Biological Resources section without reporting how the project might affect them and how the applicant might minimize, avoid, or compensate the impacts.

It is notable that no winter or autumn surveys were conducted for special-status species. Only seven days of reconnaissance-level surveys were conducted during spring and summer, and these spanning only one year. These surveys could not have adequately represented the presence and distribution of special-status species on and around the proposed BEP site. In fact, I cannot see how USFWS and CDFG survey protocols could have been followed for the special-status species potentially occurring at this site.

Minimization of Impact Estimates

Just as the CEC's Final Staff Assessments for the Metcalf Energy Center and Contra Costa Power Plan Unit 8 minimized the likely impacts there, so did the FSA for the Blythe Energy Project. For example, the PSA and FSA repeatedly point out the occurrences of exotic plant species in the project area. Virtually every place the project is thought to affect is also reported to be infested with exotic plants and to be disturbed by previous or ongoing human activities. These places include all 19 canals and drains to be crossed by the natural gas pipeline, the roadways along which the pipeline would extend, and the receiving side of the Colorado River, as examples. The implication of these infestations apparently is where exotic plants occur, or where humans have disturbed the environment, most or all of the special-status species in Table 1 of the FSA's Biological Resources section do not occur. However, irrigation canals with or without exotic plant species are reported to be habitat of Sonoron mud turtles (Jennings and Hayes __), Burrowing owls, and are likely foraging habitat for special-status species of bats, Golden eagle, Prairie falcon, Loggerhead shrike, and others on the list. Alfalfa stands provide habitat elements for Ferruginous hawks, Merlin, Mountain plover, White-faced ibis, and others. Areas that are disturbed by human activities or infested with exotic plant species cannot be written off as habitat of special-status species, as the FSA implicitly has done.

The impression one gets from reading the FSA is that the project applicant selected disturbed sites to locate pipelines and other project-related structures. However, the FSA never explicitly states that such a standard led to the siting of all project-related structures. The FSA would have been more informative by describing the conditions of other areas in the region where project-related structures are not proposed. I am left wondering whether the planned BEP really did avoid and minimize impacts by targeting disturbed sites that are less likely than other sites in the area to be inhabited or visited by special-status species. Was the coincidence of BEP structures and disturbed areas planned, fortuitous, or inappropriately described as such only after the preferred sites were selected and acquired?

The CEC staff biologists are principally concerned with loss of special-status species habitat, which indeed warrants great concern. Staff's impact estimates were thence minimized by focus solely on habitat displaced by BEP structures. Six obvious, wide-reaching, environmental impacts were completely ignored in the FSA, as well as in the BRMIMP.

1. The first of these impacts would be the creation of an ecological sink. The 16 acres of solar evaporation ponds would more than displace 16 acres of habitat. Constructed in the desert, these ponds would draw a large number and variety of migrating and resident birds to their deaths and injuries in these ponds, which would contain such toxic substances as chloride, arsenic, and selenium. Whereas this problem was briefly addressed in the FSA, its impacts are not assessed qualitatively, let alone quantitatively. Based on other evaporation ponds constructed at mine sites and power plants in the desert, what has society learned about the impacts evaporation ponds have on birds? The FSA made no reference to the literature reporting on these impacts, and it made no attempt to estimate the magnitude of the impacts likely to be realized at the BEP site. Missing an impact estimate related to the evaporation ponds was a staggering shortfall of the FSA, rendering it inadequate.

Additionally, the solar evaporation ponds were not assessed for their role in attracting congregating birds which could cause a Bird-Aircraft Strike Hazard or BASH. As I understand it, FAA regulations disallow actions that increase the occurrence of congregating waterfowl within five miles of airports. In this case, the solar evaporation ponds would be constructed less than a mile from the end of the runway of the local airport. The solar evaporation ponds may not be in compliance with FAA regulations, which could threaten federal funding to the County, as well as legal action brought by the FAA.

2. The CEC's impacts analysis did not consider the desiccation of surface water bodies in the region of the proposed BEP, which is a second major impact ignored in the FSA. According to the FSA (page 3), the water of the Colorado River, including the groundwater in its aquifers, is fully allocated to existing uses. The large volume of water to be extracted by the BEP might very well dry up springs, artesian wells, irrigation canals, and the Colorado River itself. As the FSA points out (page 335), the drawdown of groundwater for agricultural uses during the 1970s and 1980s has not fully recharged

during the last 10 years of no extraction. The very large volume of water to be used by BEP during its 40-year lifespan will not be recharged for a very long time, meaning that desiccated surface water bodies would remain desiccated for a very long time (possibly permanently). These water bodies compose a critical element of the habitat for most of the special-status species in the region. This likely impact to each and every one of these species has yet to be addressed by the CEC and WAPA in their environmental documents related to the BEP.

3. Exacerbating the consequences of the first two impacts ignored by the applicant and the CEC, the proposed land use mitigation of buying easements on agricultural fields and ceasing irrigated agriculture would degrade the habitat values of these fields to certain of the special-status species, including Golden eagle, Ferruginous hawk, Prairie falcon, White-faced ibis, and Mountain plover. More importantly, cessation of irrigation on these fields might render the BEP evaporation ponds more conspicuous to water-adapted birds. If this mitigation measure is to be carried out, I recommend mitigating the impacts of this mitigation measure.

(Ceasing irrigated agriculture as a means to mitigate the depletion of local groundwater would pose an additional impact, also not addressed in the FSA. Farm laborers would lose their work in the fields. The Water Conservation Offset Program would cease irrigation and production on enough acreage of agricultural land to save an equivalent amount of water used by the BEP. This acreage would need to be 610 to 900 acres of citrus, or multiple times the acreage of citrus grown in the Blythe area. The Water Conservation Offset Program would actually require the fallowing of all agricultural land in the Blythe area, and will force some of the people of Blythe out of work during the 40-year lifespan of the BEP. Because groundwater recharge is so slow in the Blythe area, it would be reasonable to conclude that the BEP would permanently displace farm laborers.)

4. A fourth impact not dealt with adequately in the FSA would be the effect of NO_x deposition on exotic plant growth in the region. The FSA did not depict estimated contours of nitrate deposition, which was a surprising inadequacy. The FSA did not discuss the consequences of nitrate additions to a desert environment. Will not exotic plants thrive on increased nitrogen in this environment? If so, then exotic plants are likely to spread and to crowd out endemic plants, thus increasing the magnitude and spatial area of BEP's adverse biological impacts. This larger area of impact, which would be much larger than the 74 acres of BEP's structural footprint, should have been factored into the mitigation plan.

After all, NO_x deposition was a principal concern of the CEC staff who reviewed biological impacts due to the MEC, and apparently was a great concern to staff at the BEP (EH page 203). In fact, a substantial dispute between the public and the CEC has arisen over the CEC's formulation of mitigation land to be protected due only to the contribution of NO_x from the MEC only. In the MEC Evidentiary Hearing, the CEC staunchly defended its mitigation ratio, which is designed to require the applicant to protect only 13.5% of the immediately surrounding serpentine-based grasslands. The

13.5% value was derived as the incremental increase in NO_x due to the MEC, or the amount contributed by the MEC divided by the current background NO_x levels and multiplied by 100%. The CEC ignored the fact that the MEC contribution, added to the background NO_x concentration, surpasses the threshold identified by the applicant's expert, Dr. Stuart Weiss, as causing severe adverse impacts to the ecosystem and to the Bay checkerspot butterfly.

Nevertheless, the CEC staff biologist at the MEC Evidentiary Hearing testified that she would prefer to see the mitigation formula that was implemented at MEC also be implemented at other power plants. If applied to the Blythe Energy Project, then the mitigation ratio would be much larger because the relative contribution of the BEP's NO_x generation would be much closer to 100% of the total NO_x generation in the region. To be consistent with the MEC, as per the preference of CEC staff (EH page 203), the BEP documents should include an estimated outer contour of NO_x deposition so that the acreage within that contour can be multiplied by the appropriate percentage of the region's NO_x deposition which is to be contributed by the BEP, and an appropriate mitigation offset area can be established and acquired.

5. Deposition of all toxic substances from stack releases was a fifth adverse biological impact completely ignored in the FSA. Whereas the human health impacts of criteria pollutants were dealt with in an unusually crude risk assessment, the health impacts to wildlife and plants were not addressed. Unlike humans working at the plant during 8-hour shifts, resident plants and animals would be exposed to these pollutants 24 hours per day. The FSA was inadequate by not estimating the contours and ultimate boundary of criteria pollutant deposition due to stack releases from the BEP, and it was inadequate by not estimating the consequences to plants and animals within this zone of deposition.

Furthermore, by not determining the margins of safety around pollution standards and real thresholds of impacts due to various project activities, the cumulative effects analysis of the CEC minimizes impacts. The FSA presented only point estimates of released pollutants and compared them to regulatory standards. Chronic exposures and synergistic effects were not adequately addressed.

Conservatively assuming a bulk density of 1200 kg/m^3 for deposited criteria pollutants, then the estimated generation of these pollutants in Table 7 of the FSA's Air Quality section indicates an area the size of a hectare could be buried 4.8 meters deep in criteria pollutants due to the BEP, or an area of 100 ha could be buried by nearly half a meter of criteria pollutants. However one looks at this level of generation, it is obvious that resident species of plants and animals are going to be exposed to a large amount of criteria pollutants generated by the BEP, yet no biological impacts were assessed due to the BEP.

6. The sixth impact ignored by the CEC would be the negative consequences of the proposed mitigation for Harwood's milkvetch. The California Native Plant Society advocates against genetically polluting wild populations of endemic plant species

(CNPS 1998). The FSA did not mention from where the seed would be collected, nor did it make a case that the receiving population would at all benefit from the planting of these seeds. Without assurances that the planted seeds would not cause genetic pollution nor ecological crowding at the mitigation site, it would be prudent to regard the proposed mitigation as a significant adverse impact. As such, it should not be carried out, or if it is to be carried out, then additional measures should be formulated to mitigate the impacts of the mitigation.

The CEC staff biologists minimized impact estimates by rejecting the USFWS concern that increased energy generation would be growth-inducing, and should be considered an indirect impact. The USFWS's concern is logical, and the CEC's counter-argument unconvincing (Therkelsen 2000). The CEC's position leaves proposed new energy generation exempt from either having to make the case for need of the energy (amended Warren-Alquist Act) or from considering it as an indirect, growth-inducing impact. Generators can propose new projects without proving there is energy demand and without having to refute public concerns the supply will induce additional urban sprawl. The CEC has at least attempted to disable the public from challenging both the supply and demand side of proposed new energy generation.

The FSA prepared for the BEP exposed an inconsistency in the CEC's cumulative impacts assessment. The CEC concludes that the BEP will have a significant cumulative impact because ongoing agricultural practices have already displaced special-status species and depleted the groundwater in the local aquifer. At approximately the same time period, the CEC staff claimed that because the area around Contra Costa Power Plant Unit 8 (00-AFC-1) had been farmed and abused by industry for many years, the proposed project would introduce no significant cumulative effects. The CEC apparently changes its approach to cumulative impacts assessment between proposed projects, which indicates a lack of established methodology. ??

The FSA neglected to state any level of uncertainty stated in the cumulative effects analysis, such as data gaps, lack of monitoring, and confidence levels in estimates of impacts. The very fact that 54 special-status species are thought to at least potentially occur in the area indicates 54 cumulative impacts, the grand majority of which were not addressed in the FSA. All of these shortfalls in the cumulative effects analysis found my conclusion that the CEC staff attempted to minimize the adverse impacts in favor of approving the proposed project.

Mitigation

This section of the FSA is inadequate and incomplete, as is the BRMIMP. It was improper and uninformative to defer formulation of the mitigation plan to the BRMIMP and the certification process, and it was improper for the BRMIMP to defer formulation of mitigation plans and measures to unspecified later dates. I doubt that such deference of mitigation planning to a later date would be permitted under CEQA or NEPA.

The FSA and BRMIMP lack mitigation of any kind for impacts of BEP's atmospheric pollution to special-status species within the zone of deposition. There is no mitigation for the desiccation of surface water bodies due to the extremely high use of ground water by the BEP. Furthermore, the proposed mitigation measure of planting Harwood's milkvetch might cause additional impacts such as genetic contamination and ecological crowding. The mitigation measures proposed by BEP, and apparently acceptable to the CEC, are actually severely inadequate.

The monitoring plan focused on bird use and fatalities at the evaporation ponds has no significance to the mitigation plan. No thresholds of significance were identified upon which remedial actions would be taken. The BRMIMP only states that at some point in the future, the BEP staff would run the monitoring results by the CEC to determine whether monitoring should continue. The duration of monitoring is also inadequate. Three years is trivial compared to the 40-year lifespan of the project. Given the likely impacts of the evaporation ponds, I insist that monitoring should continue throughout the life of the project and prescriptions should be described now for reacting to monitoring thresholds that are decided to be significant prior to the start-up of the BEP.

Mitigation measures and scientifically defensible monitoring plans should be established for all of the special-status species thought to possibly occur at the BEP, not just the Desert tortoise, Burrowing owl, and a few plant species. Otherwise, there was no point to identifying all the special-status species that might occur at the BEP site.

Rather than establishing mitigation and monitoring performance standards at some unspecified later date, the FSA and BRMIMP should describe them prior to the close of public comment on the BEP. Furthermore, the mitigation measures and monitoring prescriptions should be backed by a security, as well as a contract that specifies consequences for failure to meet the mitigation and monitoring performance standards.

Alternatives

The alternatives analysis related to siting the BEP was flawed at its root. The applicant's first objective for the BEP was "The construction and operation of a merchant power plant in the Blythe area ..." The CEC accepted this spatially restrictive objective, then constrained its scope of its alternatives analysis to the local Blythe area. By arbitrarily choosing the Blythe area to site this power plant, no reasonable siting alternative is possible. According to the FSA, all the groundwater in the Blythe area occupies an aquifer that is hydrologically linked to the Colorado River (page 315). Also according to the FSA, all of this water is allocated to present-day uses. Therefore, it does not matter where in the Blythe area the power plant is located because all locations in the Blythe area will have the same impacts to groundwater and all the surface-water bodies and agricultural fields that depend on that groundwater supply. A reasonable alternatives analysis would have explored sites located across a much larger geographic area, including multiple watersheds.

On page 21 of the FSA, staff states that they do not believe solar and wind technologies present feasible alternatives to the BEP. Staff argues that these technologies require large land areas, thus displacing wildlife and plant habitats. However, this claim is false. Wind turbines take up very little space. The only real problem associated with wind turbines is the bird fatality rate, but solutions to this problem are being sought with some success. As for solar technologies, there is ample surface area atop the roofs of homes and businesses in California, all of which offers little habitat value at the moment.

On page 29 of the FSA, staff concluded that energy efficiency measures are also not feasible alternatives to the BEP. No reason was provided.

Conclusions

For the reasons described above, this FSA appears to be dissimilar to an EIR or EIS. Having to consult with and crosswalk between multiple, strung-out documents forces me to make mistakes and to take too much time to provide constructive comments. This process is burdensome to me, as well as to my client. I reject it as a CEQA or NEPA equivalent process. Additionally, this FSA includes multiple conclusions about project effects on special-status species, which are flawed in the ways I described previously. It should be rewritten, but in the form of an EIR and EIS.

12 March, 2001

Shawn Smallwood, Ph.D. Date

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